



Comptroller General
of the United States

Washington, D.C. 20548

Schatz 149907

Decision

Matter of: Advanced Seal Technology, Inc.

File: B-253121

Date: August 13, 1993

James P. Rome, Esq., for the protester.

Vic Persekian, for Calnevar Seal Company, an interested party.

John P. Patkus, Esq., Defense Logistics Agency, for the agency.

Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency denied protester a reasonable opportunity to compete under current procurement by failing to promptly commence evaluation of its technical data package is dismissed as untimely where not filed within 10 working days after protester received letter from agency stating that there was insufficient time to evaluate protester's alternate product for current procurement.

2. Agency reasonably made award for more than minimum quantity under solicitation, instead of buying only the minimum and competing additional quantity upon "assumed" approval of protester's alternate item, where record shows that minimum quantity would not meet government's needs.

DECISION

Advanced Seal Technology, Inc. (AST) protests the agency's failure to approve its proposed alternate product, and the subsequent award of a contract to Calnevar Seal Company, under request for proposals (RFP) No. DLA 500-93-R-A022, issued by the Defense Logistics Agency (DLA) for a quantity of mechanical seal assemblies. AST primarily contends that the agency failed to promptly initiate evaluation of its alternate seal, and that this delay improperly denied the firm a reasonable opportunity to compete.

We dismiss the protest in part and deny it in part.

The RFP was issued on November 16, 1992, for a basic quantity of 935 seal assemblies and two alternate quantities of 1,300 and 1,700 seals, Dover Part Number (P/N) 335159 or

Calnevar P/N L0-8504. The "Products Offered" clause of the RFP provided that alternate item "offerors must furnish with their offers legible copies of all drawings, specifications or other data necessary to clearly describe the characteristics and features of the product offered."

Four firms, including Calnevar and AST, submitted proposals by the December 16 closing date. AST's proposal consisted of a faxed letter (dated December 3 and received December 4) containing unit prices and stating that AST's technical data package (TDP) would be submitted directly to the cognizant agency technician under separate cover. The contract specialist advised AST in a January 22 telephone call that the agency technician had never received the TDP, and asked that the firm furnish a copy directly to the specialist. On February 3, the specialist again advised AST that its TDP had not been received, and again asked that AST send a copy. On February 22, the specialist received the TDP. DLA sent the TDP to the Naval Sea Systems Command (NAVSEA) for evaluation on March 9; it was received by NAVSEA March 22.

By letter dated March 1, received by AST on March 5, DLA informed AST that administrative processing and technical evaluation of its TDP would require a minimum of 4 months to complete; that, due to backorders for this seal, award could not be delayed pending the results of AST's evaluation; and that, although AST's offer therefore could not be considered under the current solicitation, it would be evaluated for future procurements. Following receipt of best and final offers (BAFO) from the three remaining firms that had submitted technically acceptable proposals, DLA awarded a contract to Calnevar on April 12 for the first alternate quantity of 1,300 seals at an item price \$30 higher than AST's. AST filed this protest with our Office on April 16.

AST asserts that the agency's delays in notifying the firm that the copies of its TDP had not been received constituted an unreasonable delay in evaluating AST's alternate seal, and improperly precluded the firm from competing. AST also challenges the agency's determination that 4 months was needed to complete the evaluation.

Under our Bid Protest Regulations, protests must be filed within 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1993). AST's protest is founded on the alleged improper delays by the agency, which it claims resulted in the agency lacking sufficient time to evaluate its alternate seal, and on the agency's claim that 4 months was needed for the evaluation. AST possessed all of the information necessary to raise these arguments as of March 5, when it received DLA's March 1 letter stating that 4 months was needed for the evaluation and that AST's product therefore could not be evaluated in

time to be considered for award under this RFP. If AST believed that the agency's actions had led to its elimination from the competition, it was required to so argue within 10 days after it received this information. Because AST's protest was not received until April 16, these arguments are untimely and will not be considered. See Aero Components Co. of Arlington, Inc.--Recon., B-243823.2, July 3, 1991, 91-2 CPD ¶ 21.¹

AST also argues that awarding the first alternate quantity of 1,300 seals, rather than only the primary quantity of 935 seals, was improper in light of prior years' quantities in the 800-900 range, and the "reasonable assumption" that AST's lower-priced alternate item would be approved. AST believes DLA should have made award for the minimum quantity advertised and then competed any remaining needed quantities after approval of AST's alternate seal.

DLA made award for the 1,300 quantity because while this award was pending another solicitation (for a seal superseded by the one here) was canceled; the demand for those seals was added to the demand for the seal under the current RFP, resulting in backorders for 261 seals. Considering these backorders, even if AST's estimate of prior years' quantities is correct, the 935-unit primary

¹AST asserts that its protest was timely because it was filed within 10 working days after the award to Calnevar. However, the fact of the award to Calnevar has nothing to do with AST's arguments relating to the agency's alleged improper actions regarding its own proposal. There thus was no acceptable reason for AST to delay filing its protest until after learning of the award. Aero Components Co. of Arlington, Inc.--Recon., supra.

quantity would not have been sufficient to meet the government's needs. Award for the first alternate quantity of 1,300 therefore was proper.²

The protest is dismissed in part and denied in part.

for Samuel Berger
for James F. Hinchman
General Counsel

²NAVSEA completed its review of AST's alternate seal while this protest was pending, and determined that the seal is technically unacceptable for several reasons. Although AST disputes the agency's determination (these arguments are academic in view of our conclusion above), this determination supports the agency's further position that there was no reason for it to assume that the AST seal would be approved.